

26 February 1974

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION :

STATINTL

SUBJECT : Comments on H. R. 12471

1. This bill to amend the "Freedom of Information Act" consists of four sections which would serve to: (a) clarify the conditions under which persons may request records, (b) revise the wording of the present exemption for material classified under an Executive Order, (c) add several reporting requirements for agencies, and (d) make these changes effective 90 days after the date of enactment.

2. The first section contains five sub-sections, the first two of which clarify the conditions under which records may be made available to the public. The third sub-section would put agencies under deadlines of 10 and 20 working days respectively, to respond to requests for records and to appeals from initial refusals. If these deadlines are not met, the requester is deemed to have exhausted his administrative remedies and can go to court. Given the work involved in processing requests, it would seem that these deadlines would prove to be too tight for the Agency.

3. The fourth sub-section gives the courts the authority to examine the contents of any agency records in camera to determine whether they may be withheld under any of the nine exemptions in Section 552(b). This provision would cause a serious problem for the Agency in protecting intelligence sources and methods.

4. The fifth sub-section requires an agency to respond to a court within 20 days after service of papers. Also, if the claimant wins, his costs are reimbursed.

5. The second section of the bill would change exemption (b)(1) to read: "authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy" (new wording underlined). This would appear to clarify the exemption and would not seem to create a problem for the Agency.

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6. The third section of the bill would require annual reports each March 1 for the preceding calendar year covering: (a) the number of turndowns of requests, with reasons for each determination; (b) the number of appeals made, the results thereof, and the reasons in each case of final denial; (c) a copy of every rule made by the Agency regarding this section; (d) a copy of the fee schedule and the amount of fees collected for making records available under this section; and (e) such other information as indicates efforts to administer fully this section. All of these reporting and related requirements would pose an additional administrative burden on the Agency.

7. In summary, (a) the Agency would be seriously affected by the enactment of the provision for in camera review by the courts in cases of appeals from Agency determinations not to make records available under any of the present nine exemptions, (b) it would probably find the deadlines for responding to requests and appeals to be too short, and (c) it would be burdened to some degree if the proposed new reporting requirements became law.

STATINTL

Chief, Information Systems Analysis/Staff

LEGISLATIVE HISTORY

"Also included in exemption 552(b)(3) would be that information which is protected under a system of protection specifically authorized by statute."

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